(1) Supreme Court, U.S.
FILED

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No. 03- OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

RONALD T. EDWARDS,

Petitioner,

v.

JAMES HARVIE WILKINSON, III, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Constitution of the United States or the common law doctrine of judicial immunity prevails when there is a conflict between the two and application of judicial immunity would lead to deprivation of constitutional rights and an unconstitutional result.

2. Whether the doctrine of judicial immunity should apply when federal judges have been parties to a conspiracy to defraud a litigant and deprive him of his constitutional rights and property rights by intentionally, knowingly and maliciously relying upon, and upholding a clearly known falsified record. That is, whether federal judges should be held accountable for such actions in a Bivens action for deliberate violation of the constitutional rights of a United States citizen.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Ronald T. Edwards respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case.

OPINIONS BELOW

The order and opinion of the United States Court of Appeals for the District of Columbia Circuit is unpublished and is reproduced in the Appendix as Exhibit A catalogued hereto. The June 18, 2003 order of the United States Court of Appeals for the District of Columbia Circuit denying Petitioner's timely filed Petition for Rehearing and Suggestion for Rehearing In Banc is reproduced in the Appendix as Exhibit B hereto. Also reproduced in the Appendix as Exhibit C hereto is a copy of the November 29, 2002 Memorandum Opinion and Order issued by the United States District Court for the District of Columbia.

STATEMENT OF JURISDICTION

The opinion of the United States Court of Appeals for the District of Columbia Circuit was filed on April 15, 2003. A Petition for Rehearing and Suggestion for Rehearing In Banc was timely filed by Petitioner with said court on May 14, 2003. On June 18, 2003 said Petition was denied by the United States Court of Appeals for the District of Columbia Circuit. This Court's jurisdiction to review this case by writ of certiorari is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, Amendment I:

> Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances.

U.S. Constitution, Amendment V:

> No person shall . . . be deprived of life, liberty, or property, without due process of law;

U.S. Constitution, Amendment VIII:

> Excessive bail shall not be required, nor excessive fines imposed, not cruel and unusual punishments inflicted.

Maryland Rule 2-522(a), (c):

> (a) Court Decision. In a contested court trial, the judge, before or at the time judgment is entered, shall dictate into the record or prepare and file in the action a brief statement of the reasons for the decision and the basis of determining any damages.
>
> (c) Special Verdict. The court may require a jury to return a special verdict in the form of written findings upon specific issues. For that purpose, the court may use any method of submitting the issues and requiring written

findings as it deems appropriate, including the submission of written questions susceptible of brief answers or of written forms of the several special findings that might properly be made under the pleadings and evidence. The court shall instruct the jury as may be necessary to enable it to make its findings upon each issue. If the court fails to submit any issue raised by the pleadings or by the evidence, all parties waive their right to a trial by jury of the issues omitted unless before the jury retires a party demands its submission to the jury. As to an issue omitted without such demand, the court may make a finding or, if it fails to do so, the finding shall be deemed to have been made in accordance with the judgment entered.

No party may assign as error the submission of issues to the jury, the instructions of the court, or the refusal of the court to submit a requested issue unless the party objects on the record before the jury retires to consider its verdict, stating distinctly the matter to which the party objects and the grounds of the objection. Upon request of any party, the court shall receive objection out of the hearing of the jury.

STATEMENT OF THE CASE

A. Factual Background

This case is a *Bivens*[1] action brought by the Petitioner Ronald T. Edwards ("Edwards") against the Respondents[2], James Harvie Wilkinson, III, Diana G. Motz and Samuel G. Wilson ("Respondents"), alleging that they had violated his constitutional rights by affirming a trial court judgment entered against him and basing that affirmance on the intentional and knowing reliance on a falsified record and requesting a trial by jury. He is not claiming that a mere mistake was made but that the acts of Respondents were intentional, knowing, malicious and, above all, unconstitutional.

Edwards had filed a malpractice suit against his former attorney, Charles Michael Tobin ("Tobin"), who had represented him in an appeal before the Maryland Court of Appeals. That case had arisen over an ownership dispute regarding a valuable patent. In that suit he claimed that Tobin had wrongfully identified the verdicts as being "special verdicts" under Maryland Rule 2-522 rather than as being "general verdicts" which they in fact were. Tobin further failed to include any of the jury instructions in the joint record extract as then required by Maryland Rule 8-501(e)[3] and thereby caused the creation of

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1. *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

2. Although the caption of the Order granting the Motion for Summary Affirmance refers to the Respondents as being "in his Official Capacity," the suit was filed against them individually as well as in their official capacities.

3. Maryland Rule 8-501 was subsequently amended and no longer requires the inclusion of jury instructions in the joint record extract.

a falsified record on which the decision was based. This false characterization of the verdicts as special caused the Maryland Court of Appeals to rule against Edwards although a proper identification of the verdicts as general would have resulted in Edwards prevailing. The magnitude of Respondents actions are magnified by the fact that this underlying claim resulted in the issuance of a precedent setting opinion by the Maryland Court of Appeals in the case of *Edwards v. Gramling Engineering Corp.*, 322 Md. 535, 588 A.2d 793 (1991). As the Respondents here were aware, this opinion was issued based on the falsified record and despite a Motion for Reconsideration filed by Edwards. That case also is cited in treatises on Maryland law such as Niemeyer and Schuett, *Maryland Rules Commentary* (1992).[4] As a further result of the falsification of the record, Edwards was damaged in that he lost his rights to valuable property including his federally issued patent that was worth millions of dollars.

When the District Court dismissed the malpractice suit on the grounds that it amounted to an improper collateral attack on the Maryland ruling, Edwards appealed to the Fourth Circuit Court of Appeals. During briefing and oral argument before the Fourth Circuit, it became clear that the Respondents were aware that the District Court ruling and the Maryland Court of Appeals ruling were based upon a falsified record in that there were no special verdicts. Despite this knowledge, Respondents affirmed the District Court's dismissal of Edwards' malpractice suit.

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4. The record before the Maryland courts was falsified so that a general verdict was called a special verdict. The precedent set by the Maryland Court of Appeals is that a trial judge need not expand on the special verdict or make additional findings of fact when issuing relief unlike the findings that are required following a general verdict since the right to a jury trial is waived as to any further issues.

The Respondents conspired to and did violate Edwards' constitutional rights by knowingly relying on a clearly known falsified record to justify their ruling against him in order to protect Charles Michael Tobin who had known organized crime connections and to protect the Maryland courts from exposure of their complicity. The Respondents knowingly, intentionally and maliciously violated his right to due process of law, to petition the government for redress of grievances and his right to be spared cruel and unusual punishment. That they did so knowingly, intentionally and maliciously made their conduct particularly egregious.

The core of Edwards' Complaint and grievances is not simply the damages he has suffered but the knowing, intentional and malicious denial of his constitutional rights by the very officials and institutions that are supposed to protect those rights.

B. Procedural History

On October 4, 2001 Edwards filed a three count Complaint including several probative exhibits with the United States District Court for the District of Columbia against the Respondents alleging violations of his rights under the First, Fifth and Eighth Amendments to the United States Constitution. The Respondents filed a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) alleging, *inter alia*, that the District Court lacked subject matter jurisdiction or that the Complaint failed to state a claim upon which relief could be granted. The primary argument advanced by the Respondents was that the claim of Edwards was barred by the doctrine of judicial immunity. Edwards responded by arguing that either judicial immunity did not apply due to the especially egregious nature of the acts of

Respondents rendering their actions as not judicial in nature or that, in the alternative, that an exception to the doctrine of judicial immunity for conspiring to deliberately rely on a known falsified record in order to protect others and deny Edwards his constitutional rights. On November 29, 2002 the District Court, without a hearing, issued a Memorandum Opinion and Order granting the Respondents' Motion to Dismiss, finding that Edwards' Complaint was barred by the Doctrine of Judicial Immunity.

Edwards appealed the judgment of the District Court to the United States Court of Appeals for the District of Columbia. The United States Court of Appeals for the District of Columbia affirmed the decision of the District Court. Edwards then timely filed a Petition for Rehearing En Banc but said Petition was denied on June 18, 2003.

C. Basis For Federal Jurisdiction

The United States District Court for the District of Columbia, the court of first instance in this case, had federal jurisdiction. The Complaint was a *Bivens* action alleging violations of the First, Fifth and Eighth Amendments to the Constitution of the United States. Thus, federal jurisdiction was based upon 28 U.S.C. § 1331.

REASONS FOR GRANTING THE PETITION

The District Court decided this case based upon Edwards' alleged failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). The standard under Rule 12(b)(6) is not whether the plaintiff will prevail on the merits but rather whether the plaintiff has properly stated a claim. *Scheuer v. Rhodes*, 416 U.S. 232 (1974). In deciding the motion, the court must accept the truth of the factual allegations contained in the Complaint and draw all reasonable inferences in favor of the plaintiff. *Scheuer*, 416 U.S. at 236. Therefore, a complaint may be dismissed for failure to state a claim only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. *Hishon v. King & Spaulding*, 467 U.S. 69 (1984).

In this case there are significant issues regarding the constitutionality of the doctrine of judicial immunity, the viability of the doctrine, the breadth of the doctrine and its application to the egregious facts of this case. These issues cry out for this Court to fully and properly consider these substantial issues regarding the common law doctrine of judicial immunity. The time for re-examination of judicial immunity is due.

In its ruling below, the Court of Appeals for the District of Columbia Circuit either misapprehended the fundamental Constitutional issues at stake in this case, or chose to sacrifice the Constitution on the altar of the doctrine of "judicial immunity", which itself is repudiated by Constitutional provisions, and has never won the approval of the Congress. In essence, the Court of Appeals has ruled that federal judges are absolutely immune to the effects of the very document that gives rise to their positions, and which they have solemnly sworn to preserve, protect and defend. When federal judges *deliberately*, and not inadvertently, violate a citizen's

constitutional rights, and when other federal judges adamantly refuse to acknowledge the violations out of devotion to a principle that has neither a statutory nor constitutional basis, the very fabric of our system of government is threatened and will continue to be threatened in a most insidious manner.

This Court has before it probative evidence of criminal behavior of others and should not rely on judicial immunity for refusing to recognize that criminal behavior, transforming judicial immunity into an obstruction of justice.

This case began when a group of judges and lawyers criminally conspired to wrest ownership of a valuable, federally awarded patent from its inventor, Edwards. Since then, Edwards has consistently sought to win recognition of the wrongdoing and to initiate remedial action.

1. *The Constitution of the United States and an action to redress deprivations of constitutional rights prevails over the common law doctrine of judicial immunity so that such a suit should be permitted to go forward.*

The doctrine of judicial immunity applies when the acts taken are within the judge's jurisdiction and performed in the judge's judicial capacity. *Mireles v. Waco*, 502 U.S. 9 (1991). The issue presented by this case is whether judicial immunity can be asserted so that it acts to deny a person's constitutional rights such as a right not to be deprived of liberty or property without due process of law or to prevent the exercise of those rights, such as for redress of grievances. In other words, whether the Constitution or judicial immunity takes precedence. This issue presents a question of exceptional importance that requires this case be accepted and reviewed by this Court.

The essence of a *Bivens* action is a claim that one's constitutional rights have been violated by an agent of the United States government. The prosecution of such a constitutionally based claim should not be prevented by the application of a common law doctrine such as that of judicial immunity.

While the Appellant recognizes that the doctrine of judicial immunity is long established in the judge made common law, it does not have any basis in the Constitution of the United States. Thus, where the doctrine conflicts with the Constitution, the Constitution must prevail. Judges who intentionally and knowingly violate the constitutional rights of persons appearing before them must not be allowed to hide behind a shield of judicial immunity in order to evade accountability for their actions. Although the process of impeachment is available to remove such judges from office, impeachment does nothing to address or remedy the damages done to the individual victims or their constitutional rights such as their First Amendment right to redress of grievances or Fifth Amendment right to due process of law. Likewise, there are situations, such as in this case, where the remedy offered by an appeal is inadequate to address the acts of the offending judges or to remedy the damages done.

In our system of government, protection of the constitutional rights of citizens is paramount. It takes precedence over many forms of government actions or otherwise commendable societal goals. For example, highly relevant and probative evidence in serious criminal cases is suppressed if it was obtained in violation of the defendant's constitutional rights. In many areas the ability of the government to act in ways that would benefit the majority is restricted by the constitutional rights of a minority. Just as

the protection of fundamental constitutional rights prevail in those situations, so should the protection of fundamental constitutional rights prevail over the common law doctrine of judicial immunity.

Indeed the limitation of governmental power over the rights of individuals has a long, long history in the American legal system and its predecessor the English system as does the concept of all persons standing equal before the law with no person or class of persons being above the law. These concepts date back as far as the Magna Carta. All persons, including judges, should be held accountable and liable for their actions before the law.

The issue of whether the doctrine of judicial immunity can be invoked to deny a person their constitutional rights is one of utmost importance that can only be decided by this Court. The superiority of the Constitution of the United States must be affirmed and properly defined in this area.

2. *The Doctrine of Judicial Immunity should not apply in a case where judges have been parties to a conspiracy to defraud a litigant and deprive him of his constitutional rights and property rights by intentionally, knowingly and maliciously relying upon, and upholding a clearly known falsified record.*

In referring to judicial immunity, this Supreme Court has stated that it applies "even when the judge is accused of acting maliciously and corruptly" and that the reason for this is for the benefit of the public. *Pierson v. Ray*, 386 U.S. 546 (1967). The time is overdue to re-examine this rationale. The public does not benefit from protecting corrupt or malicious judges from the consequences of their actions.

Such judges should have a fear of consequences for their actions when they act corruptly or maliciously to intentionally deny a person's constitutional rights. The availability of a civil remedy against such a judge would be a powerful deterrence to corrupt or malicious actions. The potentiality of impeachment is not an adequate protection. Such a narrow and reasonable exception to judicial immunity is necessary to adequately protect the rights of persons depending on the courts to protect rather than violate their constitutional rights.

The harm such corrupt or malicious acts by judges inflicts is much greater than just the individual and financial harm caused by wrongfully decided cases. The harm to the judicial system caused by corruption and the denial of constitutional rights to due process and redress of grievances is immeasurable. The protection of the constitutional rights of persons appearing before a court must take precedence over judicial immunity.

The doctrine of judicial immunity should not apply to the facts of this case because the actions and affiliations of the Respondents are so egregious that they constitute actions that are not judicial in nature and therefore are not within either their jurisdiction or judicial capacity. If, however, the common law doctrine of judicial immunity does apply to this case, then an exception to judicial immunity should be recognized based on the egregious facts of this case, which include the conspiring to deliberately rely on, and upholding a clearly known falsified record in order to protect others and deny Edwards his constitutional rights.

In this case the Respondents conspired to deny Edwards his constitutional rights because of who the original defendant, Charles Michael Tobin, was and because of his

organized crime connections and also to protect the Maryland courts that had participated in the creation of a falsified record. The Maryland courts then used the falsified record to form the basis of the precedent setting opinion issued in *Edwards v. Gramling Engineering Corp., supra*, thereby compounding the egregiousness of Respondents' actions. They deliberately and knowingly relied upon, and upheld a clearly known falsified record in order to deny Edwards his property and constitutional rights.

The documented allegations in this case are so serious as to warrant the creation of an exception to judicial immunity. Judicial immunity should not be allowed to block Edwards from obtaining relief when the Respondents knowingly relied upon, and upheld a clearly known falsified record and conspired to intentionally deprive him of his constitutional rights in order to protect a party with organized crime connections. Any one of these three elements should be sufficient to create such an exception.

This Supreme Court has always recognized that absolute immunity comes at a great cost in that an injured party with a meritorious claim is denied compensation. It is "justified only when 'the contributions of immunity to effective government in particular contexts outweigh the perhaps recurring harm to individual citizens.'" *Westfall v. Ervin*, 484 U.S. 292, 295-96 (1988), quoting *Doe v. McMillan*, 412 U.S. 306, 320 (1973). The contributions of applying immunity in this case are clearly outweighed by the cost of the possible recurring harm to citizens if the conduct alleged in this case is allowed to occur without consequences or liability to anyone but the victim. The cost of this case is to challenge the entire structure of the United States patent system and with that system a serious challenge to the entrepreneurial

spirit that underlies our economic system. In addition to the costs to the citizen-victims, the cost in terms of damage to the integrity and legitimacy of our judicial system and the faith and trust citizens have in that system is more than should be tolerated. This cost is clear in this case in that a significant precedent of the Maryland Court of Appeals is now based on a clearly known falsified record and redress has thus far been denied Edwards.

The issue of whether an exception should be created to the doctrine of judicial immunity for situations such as this where judges have conspired to intentionally, knowingly and maliciously to deprive Edwards of his property by upholding and basing their decision on a clearly known falsified record is one of utmost national importance that demands the attention of this Court. If the rulings below are allowed to stand, the history of this case will provide those so inclined with a roadmap as to how to steal property from United States citizens.

CONCLUSION

For the reasons stated above, this Petition for Writ of Certiorari should be granted.

The Respondents in this case stand in contempt of the Constitution of the United States by their actions that are outside of their judicial capacity and jurisdiction in contravention of the Constitution. There is convincing probative evidence that they knowingly and deliberately chose to act in a manner that they knew would deny Edwards his constitutional rights.

The simple question at issue here is, which comes first, the Constitution with its expressed guarantees of the rights of citizens to due process of law, to petition for redress of grievance and of freedom from cruel and unusual punishment, or the traditional supposed time honored immunity of federal judges from lawsuits that would require them to answer for official acts performed in deliberate violation of the very Constitution they have sworn to preserve, protect and defend? The Petitioner respectfully submits that the Constitution should come first.

Clearly the issues involved in this case are of exceptional importance and call into question the applicability of judicial immunity and whether the rationale for it continues to be viable in today's environment insofar as intentional, knowing and malicious denials of a party's constitutional rights are involved. A limited exception to judicial immunity should be recognized for such a situation. At the very least, issues of this magnitude require full plenary briefing and oral argument before this Supreme Court so that the Court can properly and fully consider the arguments and decide the merit of Petitioner's position.

Respectfully submitted,

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APPENDIX

APPENDIX A — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT FILED APRIL 15, 2003

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 03-5002

SEPTEMBER TERM, 2002
01cv02093

Ronald T. Edwards,

Appellant

v.

James Harvie Wilkinson, III, In his Official Capacity, et al.,

Appellees

BEFORE: Ginsburg, Chief Judge, and Henderson and Rogers, Circuit Judges

ORDER

Upon consideration of the motion for summary affirmance and the opposition thereto, it is

ORDERED that the motion be granted. The merits of the parties' positions are so clear as to warrant summary action. *See Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam); *Walker v. Washington*,

627 F.2d 541, 545 (D.C. Cir.) (per curiam), *cert. denied*, 449 U.S. 994 (1980). A judge is entitled to absolute immunity from suits for money damages for all actions taken in his judicial capacity, unless these actions are taken in the complete absence of all jurisdiction. *See Mireles v. Waco*, 502 U.S. 9, 11-12 (1991) (per curiam).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

s/ [illegible]

APPENDIX B — MEMORANDUM OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA FILED NOVEMBER 29, 2002

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

Civil Action No. 01-2093 (RMU)

Document Nos.: 7, 19

RONALD T. EDWARDS,

Plaintiff,

v.

JAMES HARVIE WILKINSON, III, et al.,

Defendants.

MEMORANDUM OPINION

GRANTING THE DEFENDANTS' MOTION TO DISMISS; DENYING THE PLAINTIFF'S CONTINGENT MOTION TO AMEND HIS COMPLAINT

I. INTRODUCTION

The *pro se*[1] plaintiff, Ronald T. Edwards, brings this

1. Though the plaintiff states that he is *pro se*, in his opposition to the motion to dismiss and in his contingent motion for leave to (Cont'd)

Bivens[2] action for damages against three federal judges in their official and individual capacities. The defendants are United States Court of Appeals Judges James H. Wilkinson, III, and Diana G. Motz and United States District Judge Samuel G. Wilson. Mr. Edwards claims that the defendants, sitting as a panel of the United States Court of Appeals for the Fourth Circuit, violated his constitutional rights by affirming a trial court judgment against him. This matter is currently before the court on the defendants' motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1), (4), and (6) and the plaintiff's "contingent" motion for leave to amend his complaint. For the reasons that follow, the court grants the defendants' motion to dismiss and denies the plaintiff's contingent motion for leave to amend his complaint.

II. BACKGROUND

The plaintiff filed a malpractice suit in the United States District Court for the District of Maryland against Charles Tobin, an attorney who had represented the plaintiff in an appeal before the Maryland Court of Appeals. Compl. ¶¶ 18, 27. The original case involved a patent dispute between

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(Cont'd)

amend his complaint the plaintiff states that American University law professor Mark C. Niles has assisted him "in this matter." Pl.'s Opp'n at 1; Pl.'s Mot. to Amend at 1. Professor Niles has not signed any of the submissions, and the plaintiff has not stated whether Professor Niles is admitted to practice law in this jurisdiction.

2. *Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics*, 403 U.S. 388, 397 (1971).

Mr. Edwards and an engineering corporation. *Id.* ¶¶ 12-17. The plaintiff claims that Mr. Tobin submitted a falsified record to the state appellate court, resulting in a judgment against the plaintiff. *Id.* ¶¶ 23-24. After the judgment, the plaintiff allegedly learned that Mr. Tobin had organized crime connections. *Id.* ¶ 18.

On the plaintiff's malpractice claim, the district court granted Mr. Tobin's motion for summary judgment, holding that Mr. Edwards' suit was an improper collateral attack on the state appellate court's ruling. *Id.* ¶ 30, Ex. 6. The plaintiff appealed to the Fourth Circuit. *Id.* ¶ 31, Ex. 6. Sitting as a panel, the defendants affirmed the district court's judgment on March 19, 1998.[3] *Id.* On October 5, 1998, the Supreme Court denied the plaintiff's petition for a writ of certiorari. *Id.* ¶ 31; *Edwards v. Tobin,* 525 U.S. 906 (1998).

The plaintiff pleads that the defendants knew, or should have known, that the district court and the state appellate court based their rulings on a falsified record. Compl. ¶ 32. The defendants' ruling on the plaintiff's appeal allegedly deprived the plaintiff of his constitutional rights "in order to protect a defendant with known organized crime connections and to protect Maryland authorities from exposure of their complicity." Pl.'s Opp'n at 2-3. In the instant complaint, Mr. Edwards alleges violations of the First, Fifth, Eighth and

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3. The Fourth Circuit decision, included as Plaintiff's Exhibit 6, provides a more extensive factual summary of the events that led to the present lawsuit. *Edwards v. Tobin,* 1998 U.S. App. LEXIS 5338, at *2-7 (4th Cir. Mar. 19, 1998), *cert. denied,* 525 U.S. 906 (1998).

Fourteenth Amendments,[4] that, according to the plaintiff, constitute a *Bivens* action. Compl. ¶¶ 1, 4. The plaintiff states that "at all times relevant to the matters complained of herein" the defendants were acting within the scope of their employment and in their official capacities. *Id.* ¶ 10. Accordingly, the plaintiff seeks relief including: (1) compensatory damages for the loss of his malpractice claim against Mr. Tobin in the amount of 23 million dollars; (2) compensatory damages for emotional distress; and (3) punitive damages. *Id.* ¶ 57.

III. ANALYSIS

A. Legal Standard for a Motion to Dismiss

For a complaint to survive a Rule 12(b)(6) motion to dismiss, it need only provide a short and plain statement of the claim and the grounds on which it rests. FED. R. CIV. P. 8(a)(2); *Conley v. Gibson*, 355 U.S. 41, 47 (1957). A motion to dismiss under Rule 12(b)(6) tests not whether the plaintiff will prevail on the merits, but instead whether the plaintiff has properly stated a claim. FED. R. CIV. P. 12(b)(6); *Scheuer*, 416 U.S. at 236. The plaintiff need not plead the elements of a prima-facie case in the complaint. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506 (2002) (holding that a plaintiff in an employment-discrimination case need not establish her

4. Specifically, Mr. Edwards alleges that the defendants violated his (1) First Amendment right to petition the government for redress of grievances; (2) Fifth Amendment right by depriving him of a property interest without due process of law; and (3) Eighth Amendment protection against cruel and unusual punishment. Compl. ¶¶ 43-55. He fails to detail his Fourteenth Amendment claim.

prima-facie case in the complaint); *Sparrow v. United Air Lines, Inc.*, 216 F.3d 1111, 1114 (D.C. Cir. 2000). Thus, the court may dismiss a complaint for failure to state a claim only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984); *Atchinson v. Dist. of Columbia*, 73 F.3d 418, 422 (D.C. Cir. 1996). In deciding such a motion, the court must accept all of the complaint's well-pled factual allegations as true and draw all reasonable inferences in the nonmovant's favor. *Scheuer*, 416 U.S. at 236.

B. Judicial Immunity

The plaintiff's claims fail because judicial immunity protects the defendants from suit.[5] The principle of judicial immunity is well-established. *Tinsley v. Widener,* 150 F. Supp. 2d 7, 11 (D.D.C. 2001) (*citing Stump v. Sparkman,* 435 U.S. 349 (1978); *Pierson v. Ray,* 386 U.S. 547 (1967); *Bradley v. Fisher*, 80 U.S. 335 (1871); *Randall v. Brigham*, 74 U.S. 523 (1868)). Absolute immunity is necessary for judges carrying out their judicial functions because judges must "act upon [their] convictions, without apprehension of personal consequences to [themselves]." *Bradley*, 80 U.S. at 347. Appealing to a higher court for relief is the only judicial procedure available to a litigant who seeks to challenge the legality of decisions made by a judge in her judicial capacity. *Dacey v. Clapp,* 1993 U.S. Dist. LEXIS 15815, at *5 (D.D.C. Oct. 29, 1993). Judicial immunity does not extend to judges'

5. As judicial immunity bars the plaintiff's claims, the court does not address the defendants' sovereign and qualified immunity arguments.

administrative, legislative, or executive functions, however. *Forrester v. White,* 484 U.S. 219, 227 (1988).

The nature of the act and not the identity of the individual determines whether absolute judicial immunity is applicable. Thus, so long as the act involves a judicial function, immunity applies regardless of whether the plaintiff is suing the judge in her individual or official capacity. *Daul v. Meckes,* 897 F.Supp. 606, 611 (D.D.C.1995), *aff'd*, 107 F.3d 922 (D.C. Cir. 1996) (per curiam); *see also Forbush v. Zaleski*, 20 Fed. Appx. 481, 482 (6th Cir. 2001) (applying judicial immunity to a judge sued in his individual and official capacities for actions within the scope of his official duties). The acts of assigning a case, ruling on pretrial matters, and rendering a decision are all within a judge's judicial capacity. *John v. Barron*, 897 F.2d 1387, 1391 (7th Cir. 1990), *cert. den'd*, 498 U.S. 821 (1990).

Immunity for judicial functions does not apply when judges act in the clear absence of jurisdiction. *Stump*, 435 U.S. at 357. This limitation, however, is narrowly construed. *Id.* at 356.

Mr. Edwards asserts that judicial immunity does not apply here because the defendants took such "egregious" actions as to render them "not within either their jurisdiction or judicial capacity." Pl.'s Opp'n at 4. Alternatively, the plaintiff urges that if judicial immunity applies, the court should recognize an exception to the doctrine because the defendants "conspired to deny the plaintiff his constitutional rights because of who . . . Charles Tobin was and because of his organized crime connections" as well as "to protect the

Maryland courts that had participated in the creation of a falsified record." Pl.'s Opp'n at 5.

Here, the defendants ruled on an appeal that the plaintiff himself placed before them. Compl. at 31. The plaintiff even concedes that the defendants were acting within the scope of their official duties. Compl. ¶ 10. Thus, the defendants acted within their judicial capacity. *John*, 897 F.2d at 1387. Indeed, this is a paradigmatic example of judges carrying out their judicial function. *Forrester*, 484 U.S. at 227. The appropriate procedure for questioning the legality of the defendants' decision is an appeal to the Supreme Court, not a civil action against the presiding judges.[6] *See Dacey*, 1993 U.S. Dist. LEXIS 15815, at *5. For all these reasons, judicial immunity bars the plaintiff's claims.

Perhaps realizing that the claims are barred, the plaintiff asks the court to create an exception to the doctrine of judicial immunity. Pl.'s Opp'n at 5. In asking the court to ignore numerous Supreme Court decisions and over 130 years of precedent, the plaintiff fails to cite any cases where courts have waived judicial immunity based on a defendant's "egregious" behavior. *Id.* The plaintiff relies mistakenly on *Westfall,* which pertains to the absolute immunity of federal employees sued under state tort law—not the immunity of judges sued for constitutional violations. *Id.*; *Westfall v. Erwin*, 484 U.S. 292, 293 (1988). Thus, the court will not create an exception to judicial immunity.

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6. As noted *supra,* the plaintiff did appeal to the Supreme Court, but the Court denied his petition for a writ of certiorari on October 5, 1998. *Edwards,* 525 U.S. 906.

Appendix B

C. The Court Denies the Plaintiff's Contingent Motion for Leave to Amend His Complaint

The plaintiff's opposition to the defendants' motion to dismiss contains a brief assertion that if the court

> finds that the *pro se* plaintiff's complaint fails to state a claim upon which relief can be granted, the defendant's Motion to Dismiss with prejudice should be denied. The proper response should not be to dismiss the claim, but to allow the *pro se* plaintiff to amend the complaint in order to state an actionable claim.

Pl.'s Opp'n at 3. This request is unusual, especially because no proposed amended complaint is before the court and the plaintiff fails to demonstrate how the amended complaint would properly state a claim.

Because of these shortcomings in the plaintiff's opposition, the court issued an order earlier this month directing the plaintiff to clarify whether he seeks to amend his complaint. Order dated Nov. 13, 2002. The order also directs the plaintiff to submit the proposed amended complaint, if applicable, and to "detail how the amended complaint differs from the original complaint." *Id.*; LCvR 7.1(i) (requiring a motion to amend a pleading to include the proposed amended pleading).

Responding to the court's order, the plaintiff filed a Contingent Motion for Leave to Amend Complaint. Instead of providing the information ordered by the court, the motion

merely reiterates the request contained in the opposition. Pl.'s Opp'n at 3; Pl.'s Mot. to Amend at 1-2. The motion fails to comply with the court's order because it neither includes the proposed amended complaint nor states how the amended complaint would differ from the original complaint. *Id.* The motion argues that the court should deny the motion to dismiss so that the plaintiff can amend his complaint, if the denial is pursuant to Federal Rule of Civil Procedure 12(b)(6). The plaintiff provides no legal authority for this request, and cites to no local rule that would permit the request. The plaintiff, in essence, is asking the court to blindly deny a valid motion so that the plaintiff can amend his complaint with any document labeled as an amended complaint. *Id.* This the court will not do. Thus, the court denies the plaintiff's motion. LCvR 7.1(i).

IV. CONCLUSION

For all these reasons, the court grants the defendants' motion to dismiss and denies the contingent motion for leave to amend the complaint. An order directing the parties in a manner consistent with this Memorandum Opinion is separately and contemporaneously issued this 29 day of November, 2002.

s/ Ricardo M. Urbina
Ricardo M. Urbina
United States District Judge

APPENDIX C — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT DENYING PETITION FOR REHEARING FILED JUNE 18, 2003

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 03-5002

SEPTEMBER TERM, 2002
01cv02093

Ronald T. Edwards,

Appellant

v.

James Harvie Wilkinson, III, In his Official Capacity, et al.,

Appellees

BEFORE: Ginsburg, Chief Judge, and Edwards, Sentelle, Henderson, Randolph, Rogers, Tatel, Garland, Circuit Judges

ORDER

Upon consideration of appellant's petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Appendix C

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: s/ Michael C. McGrail
Michael C. McGrail
Deputy Clerk